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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 TERRENCE BREWER,

12 Plaintiff,

13 v.

14 CALIFORNIA STATE BAR, *et al.*,

15 Defendants.
16

Case No. 2:23-cv-0860-TLN-JDP (PS)

ORDER; FINDING AND
RECOMMENDATIONS

17 Plaintiff, proceeding pro se, brings this action against the State Bar of California, its Board
18 of Trustees, and the Committee of Bar Examiners, alleging violations of the Americans with
19 Disabilities Act (“ADA”), California’s Unruh Civil Rights Act (“Unruh Act”), and a defamation
20 claim. ECF No. 4. On March 7, 2024, I recommended that defendants’ motion to dismiss be
21 granted in part. ECF No. 25. Specifically, I found that plaintiff’s claim for interference,
22 coercion, or intimidation under Title V of the Americans with Disabilities Act, 42 U.S.C.
23 § 12203(b), should be dismissed with leave to amend, and that his state law claims should be
24 dismissed without leave to amend as barred by sovereign immunity. *Id.* at 10-12. I also,
25 however, rejected defendants’ argument that sovereign immunity barred plaintiff’s retaliation
26 claim under Title V of the ADA, 42 U.S.C. § 12203(a). *Id.* at 7-8. My recommendations were
27 adopted by the district judge, ECF No. 29; and defendants then appealed the partial denial of their
28 motion to dismiss, ECF No. 30.

1 While that appeal was pending, plaintiff filed a second amended complaint, ECF No. 36,
2 and a motion for preliminary injunctive relief, ECF No. 43, asking that the court order defendants
3 to: (1) grant him a provisional license to practice law, (2) reevaluate his bar exam answers from
4 tests taken in 2021, 2022, and 2023, (3) disclose relevant records used to determine his test
5 scores, (4) direct the United States Attorney General to investigate some of his claims, and
6 (5) grant all other equitable relief sought in his second amended complaint. *Id.* at 1-2.

7 On January 15, 2025, the Ninth Circuit vacated the partial denial of defendants' motion to
8 dismiss, noting that, during the pendency of the appeal, new precedent had issued, and this court
9 was required conduct a claim-by-claim evaluation of whether, in enacting the ADA, congress
10 validly abrogated sovereign immunity as to plaintiff's Title V claims. ECF No. 46 at 3. The
11 Ninth Circuit remanded with instructions to allow plaintiff to amend his Title V claims before
12 proceeding. *Id.*

13 In light of the Ninth Circuit's instruction that plaintiff be provided an opportunity to
14 amend, I find it appropriate to deny plaintiff's motion for preliminary injunctive relief without
15 prejudice to renewal.¹ To properly weigh a request for preliminary injunctive relief, a court must
16 consider, among other things, whether a claimant is likely to succeed on the merits. *See Winter v.*
17 *NRDC, Inc.*, 555 U.S. 7, 20 (2008). That determination necessarily turns on the substance of the
18 operative complaint. Given the Ninth Circuit's instruction to afford plaintiff an opportunity to
19 amend his complaint, it makes little sense to make that determination now, especially because the
20 type of preliminary injunctive relief a court may grant also turns on the operative complaint. *See*
21 *Pacific Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) ("A
22 preliminary injunction is appropriate when it grants relief of the same nature as that to be finally
23 granted.").

24 Plaintiff may file a new complaint within thirty days of the entry of this order and findings
25 and recommendations. It should be titled "Third Amended Complaint," refer to the appropriate
26

27 ¹ Plaintiff also filed an ex parte application for an order shortening time for the court to
28 hear his motion for a preliminary injunction. ECF No. 44. Since I recommend that the motion
for injunctive relief be denied, plaintiff's ex parte application is denied as moot.

1 case number, and be complete in itself, without reference to any filings that precede it. Upon
2 filing, it will supersede the prior complaint. If plaintiff elects not to file an amended complaint,
3 he may still renew his motion for injunctive relief.

4 Accordingly, it is ORDERED that:

5 1. Within thirty days of the date of this order, plaintiff shall either file a third amended
6 complaint or notify the court that he wishes to proceed on the second amended complaint filed on
7 April 5, 2024. *See* ECF No. 36.

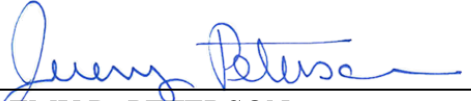
8 2. Plaintiff's ex parte application for an order shortening time, ECF No. 44, is denied as
9 moot.

10 Further, it is hereby RECOMMENDED that plaintiff's motion for injunctive relief, ECF
11 No. 43, be DENIED without prejudice to renewal.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
17 objections shall be served and filed within fourteen days after service of the objections. The
18 parties are advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
20 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 Dated: February 12, 2025

24 
25 JEREMY D. PETERSON
26 UNITED STATES MAGISTRATE JUDGE
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